IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

WP(C).No. 19040 of 2006(N)

AGAINST THE ORDER DATED 14/03/2006 IN IA. 2421 /2002 IN OS.7/1985 of SUB COURT, MAVELIKKARA

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PETITIONER:

VASUDEVAN NAMBOOTHIRI,
MANNARASALA ILLOM, THULAMPARAMPU, NADUVATTUM MURI,
HARIPPAD VILLAGE.

BY ADV. SRI.C.P.PEETHAMBARAN

RESPONDENTS:

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1. **K.P. RAMAKRISHNAN NAIR,**
   VELLOOR KADAKAMPALLIL VEETTIL, THULAMPARAMPU,
   NADUVATTUM MURI, HARIPPAD VILLAGE.

2. **P. NARENDRAN,**
   ONAMPALLIL, PILAPUZHA THEKKUMMURI,
   HARIPPAD VILLAGE.

3. **A. SREERAMAN,**
   ADVOCATE, HARIPPAD.

4. **K. MATHEW,**
   ADVOCATE, HARIPPAD (DIED).

5. **K. SUBRAMONIA IYER (DIED),**
   RECEIVER, ADVOCATE, HARIPPAD.

6. **GOPINATHA PANICKER,**
   RECEIVER, ADVOCATE, HARIPPAD.

7. **C.V. RAMAKRISHNA PILLAI,**
   CHALIL PUTHEN VEEDU, THULAMPARAMPU,
   NADUVATTOM, HARIPPAD.

BY ADV. SRI.S.SHANAVAS KHAN for R6

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.19040/2006 N

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PAPER REPORT SHOWING THE PLIGHT OF THE TOWN HALL APPEARED IN MATHRUBHOOMI DAILY DTD. 19/07/1996.**

EXT.P2: **COPY OF THE REPORT OF COMMISSIONER IN O.S.128/1998 OF SUB COURT, MAVELIKKARA.**

EXT.P3: **COPY OF THE OBJECTION DTD. 10/09/1999 FILED BY THE PETITIONER INI.A.NO.60/1999 IN O.S.7/1985.**

EXT.P4: **COPY OF THE ORDER DTD. 28/11/2002 IN I.A.NO.60/1999 IN O.S.7/1985 ON THE FILE OF SUB COURT, MAVELIKKARA.**

EXT.P5: **COPY OF THE APPLICATION IN I.A.2421/2002 IN O.S.7/1985 ON THE FILE OF SUB COURT, MAVELIKKARA.**

EXT.P6: **COPY OF THE ORDER DTD. 14/03/2006 IN I.A.2421/2002 IN O.S.7/1985 ON THE FILE OF SUB COURT, MAVELIKKARA.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 19040 of 2006

Dated this the 6th day of July , 2007

JUDGMENT

It is declared that service of notice on the first respondent is sufficient. In a scheme suit, the proceedings before the final decree court stood posted for finalization of the draft scheme. The writ petitioner, who was the first respondent in the final decree application, had filed apparently serious objections to the draft scheme which had been filed by the first respondent herein. On the day the Ext.P4 order was passed, since the counsel for the petitioner was convalescing after minor surgery on his tongue, the junior advocate sought for an adjournment. The petitioner complains that, it was turning the above request for adjournment that the learned sub judge went on to pass Ext.P4 order approving the scheme and passing final decree. Immediately, thereafter, Ext.P5 application for review and for setting aside Ext.P4 was filed. But, after keeping that application pending about more than three years and three months, the learned sub judge has now passed Ext.P6 order stating inter alia

that the Review Petition is not in proper form and that final decree was passed as early as on 26.11.2002 and there is no prayer to set aside the final decree passed.

2. The reasons stated by the learned subordinate judge under Ext.P6 for rejecting Ext.P5 are too technical to receive acceptance from this court. The final decree stated to have been passed is passed under Ext.P4 order which was sought to be reviewed as per Ext.P5 application. In other words, the prayer in Ext.P5 was to set aside that final decree which was passed ex-parte. It was too late in the day for the learned subordinate judge to have informed the petitioner that Ext.P5 is not in a proper form. I notice that Ext.P5 application was filed within the time prescribed for review petitions.

Accordingly, I set aside Ext.P6 and direct the learned subordinate judge to pass fresh orders on Ext.P5 on the merit of the objections raised by the petitioner to the draft scheme. The learned Subordinate Judge should have remembered that he was obliged to mete out justice between the parties rather than non suiting the petitioner on technical reasons and that too after having kept the review petition pending for about three and half

years. It is open to the petitioner to raise the additional grounds in support of Ext.P4. If the additional grounds are raised by the petitioner within three weeks from today before the court below, the court below will consider those grounds also along with Ext.P4.

The writ petition is disposed of as above.

PIUS C. KURIAKOSE,
JUDGE.

dpk